S.B. Civil Misc. Appeal No.1935/2006
(Moti Ram & anr. Vs. Kheta Ram & ors.)

Date of Order :: 15th February 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. S.K.Sankhla for the appellants.

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This appeal has been preferred by the claimants against the award dated 22.07.2006 made by the Motor Accidents Claims Tribunal [SC & ST (Prevention of Atrocities) Cases], Jodhpur in Claim Case No.70/2005 whereby, while awarding compensation under Section 163-A of the Motor Vehicles Act, 1988 on account of accidental death of Tiku Ram (about 25 years) in the sum of Rs.4,41,500/- to the mother and wife of the victim, the Tribunal has not allowed any amount to his father; and has apportioned the award amount in the manner that a sum of Rs.1,41,500/- has been allowed to the wife of the victim (non-applicant No.4) and remaining Rs.3,00,000/- to his mother (claimant No.2); and further, while exonerating the insurer of its liability for the deceased being a gratuitous passenger in the vehicle in question at the time of accident and his risk being not covered under the insurance policy, the Tribunal has made the award of compensation against

registered owner of the vehicle involved in accident and has directed that firstly the amount of compensation shall be deposited by the insurer but that shall be paid to the claimants only upon depositing of the amount or furnishing of security by the owner.

The Tribunal has found that the victim Tiku Ram met with his untimely end when he fell out and was crushed beneath the wheels of jeep bearing registration No. RJ 19 C 7217 he was travelling in. The Tribunal has proceeded to exonerate the insurer of its liability with the finding that the Insurance Policy Ex. A/1 was 'Act only' policy and risk in relation to the said victim was not covered thereunder. The Tribunal has also noticed the contention about additional premium of Rs.700/- having been charged under the policy in question but has found the same not to be in relation to the occupants of the vehicle. However, the Tribunal has considered it appropriate to direct that the insurer shall first pay compensation amount and shall then be entitled to recover the same from the registered owner of the vehicle, non-applicant No.1.

On quantification of compensation, the Tribunal has noticed the submissions of the father of the victim PW-1 Motiram that his son was an agriculture-labourer earning Rs.150/- per day; that his earning was likely to be enhanced in

future; and that wife of the deceased has contracted second marriage with one Jassa Ram. The Tribunal has not accepted the assertion of the claimants about earnings of the victim and about future enhancement; and for want of any other reliable evidence has put an estimate on his income as unskilled labourer at Rs.3,000/- per month i.e. Rs.36,000/- per annum; and after deducting one-third therefrom and with reference to Second Schedule to the Act and the age of the deceased at 25 years has assessed pecuniary loss at Rs.4,32,000/-. The Tribunal has allowed Rs.2,000/- towards funeral expenses, Rs.5,000/- towards loss of consortium to the wife and Rs.2,500/- towards loss of estate and in this manner has assessed total loss at Rs.4,41,500/-. The Tribunal has referred to the provisions of Section 163-A of the Act and has observed that legal heirs of the victim i.e. wife and mother as the heirs of first class under the Hindu Succession Act, 1956 were entitled to compensation and not his father; and has apportioned the amount of compensation between wife and mother of the deceased as noticed hereinbefore.

By way of this appeal, the claimants, parents of the victim seek to question (i) exoneration of the insurer; (ii) the condition about disbursement of the amount to be deposited by the insurer only upon furnishing security or making deposit by the owner; (iii) the quantum of compensation as being too

low; and (iv) apportionment of the amount in favour of the wife of the victim though she has remarried.

Having examined the impugned award in its totality, this Court is of opinion that the present appeal does not merit admission. It is noticed that the parents of the victim were respectively in the age of 50-47 years at the time of filing of claim application and they asserted the wife of the deceased having contracted second marriage and impleaded her as non-applicant No.4. No cogent and reliable evidence has been produced on record in relation to the earning of the deceased, about 25 years in age and the Tribunal has taken him to be an unskilled labourer on the basis of oral evidence and yet has taken his earnings at Rs.3,000/- per month that remains an estimate rather on the higher side. The Tribunal has applied maximum side multiplier of 17 and has assessed pecuniary loss at Rs.4,32,000/-. The ultimate award made by the Tribunal in the sum of Rs.4,41,500/ can only be said to be rather excessive than that of just compensation admissible in this case. The Tribunal has not restricted even on the rate of interest and has allowed the same at 7.5% per annum from the date of filing of claim application. The award in question from all standards stands on the higher side ruling out any scope for enhancement.

Then, out of the total award amount of Rs.4,41,500/- the Tribunal has apportioned only about one-third in favour of the wife of the victim and has allowed about two-third to the mother. The claimants are not justified in questioning even such apportionment and suggesting that wife of the deceased has been allowed larger amount. Even if wife of the deceased has contracted second marriage under the force of circumstances, she cannot be deprived of just compensation for accidental death of her husband; and the apportionment as ordered by the Tribunal in her relation does not appear excessive.

So far exoneration of insurer is concerned, it does not appear necessary to take up reconsideration of such finding in this appeal at the instance of the claimants particularly when the insurer has otherwise been directed to deposit the amount of compensation in the first instance and the interests of the claimants are not jeopardized. The proposition of putting requirements upon the owner of the vehicle of furnishing security or of depositing the amount before disbursement to the claimants of course may not be applied indiscriminately to every case; but on the facts and in the overall circumstances of the present case and where the Tribunal has recorded finding of non-coverage of risk in relation to the victim and not of any violation of policy condition by the insured it does not

appear necessary or expedient to take up reconsideration of such proposition either.

In the aforesaid view of matter, there appears no reason to admit the present appeal preferred by the claimants.

The appeal fails and is, therefore, dismissed summarily.

[DINESH MAHESHWARI], J.

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